

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RONALD F. MARTINEZ,

Plaintiff,

v.

W.L. MUNIZ, et al.,

Defendants.

Case No. 18-cv-02291-HSG (PR)

**ORDER REOPENING ACTION;
SCHEDULING SUMMARY
JUDGMENT**

On April 17, 2018, plaintiff, an inmate at Corcoran State Prison, filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983 claiming that he was retaliated against for filing prior federal district court actions against his jailors at Salinas Valley State Prison (“SVSP”), where he was previously incarcerated. On July 17, 2018, the Court reviewed the complaint and found that, liberally construed, it stated cognizable First Amendment claims against seven defendants. On September 13, 2018, after defendants had been served and had appeared through counsel, the Court referred the action to Magistrate Judge Robert Illman for early settlement proceedings. On November 28, 2018, Judge Illman reported that the case did not settle.

Accordingly, in order to expedite the resolution of this case, the Court now orders:

1. The Clerk shall REOPEN the action.
2. No later than **91 days** from the date this order is filed, defendants must file and serve a motion for summary judgment or other dispositive motion. A motion for summary judgment also must be accompanied by a *Rand* notice so that plaintiff will have fair, timely and adequate notice of what is required of him in order to oppose the motion. *Woods v. Carey*, 684 F.3d 934, 939 (9th Cir. 2012) (notice requirement set out in *Rand v. Rowland*, 154 F.3d 952 (9th

1 Cir. 1998) must be served concurrently with motion for summary judgment).¹

2 Plaintiff's opposition to the summary judgment or other dispositive motion must be filed
3 with the Court and served upon defendants no later than **28 days** from the date the motion is filed.
4 Plaintiff must bear in mind the notice and warning regarding summary judgment provided later in
5 this order as he prepares his opposition to any motion for summary judgment.

6 Defendants **shall** file a reply brief no later than **14 days** after the date the opposition is
7 filed. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will
8 be held on the motion.

9 3. Plaintiff is advised that a motion for summary judgment under Rule 56 of the
10 Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you must
11 do in order to oppose a motion for summary judgment. Generally, summary judgment must be
12 granted when there is no genuine issue of material fact – that is, if there is no real dispute about
13 any fact that would affect the result of your case, the party who asked for summary judgment is
14 entitled to judgment as a matter of law, which will end your case. When a party you are suing
15 makes a motion for summary judgment that is properly supported by declarations (or other sworn
16 testimony), you cannot simply rely on what your complaint says. Instead, you must set out
17 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents,
18 as provided in Rule 56(e), that contradict the facts shown in the defendants' declarations and
19 documents and show that there is a genuine issue of material fact for trial. If you do not submit
20 your own evidence in opposition, summary judgment, if appropriate, may be entered against you.
21 If summary judgment is granted, your case will be dismissed and there will be no trial. *Rand v.*
22 *Rowland*, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc) (App. A).

23 (The *Rand* notice above does not excuse defendants' obligation to serve said notice again
24 concurrently with a motion for summary judgment. *Woods*, 684 F.3d at 939).

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26 ¹ If defendants assert that plaintiff failed to exhaust his available administrative remedies as
27 required by 42 U.S.C. § 1997e(a), defendants must raise such argument in a motion for summary
28 judgment, pursuant to the Ninth Circuit's opinion in *Albino v. Baca*, 747 F.3d 1162 (9th Cir. 2014)
(en banc) (overruling *Wyatt v. Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003), which held that
failure to exhaust available administrative remedies under the Prison Litigation Reform Act,
should be raised by a defendant as an unenumerated Rule 12(b) motion).

1 4. All communications by plaintiff with the Court must be served on defendants'
2 counsel by mailing a true copy of the document to defendants' counsel. The Court may disregard
3 any document which a party files but fails to send a copy of to his opponents.

4 5. Discovery may be taken in accordance with the Federal Rules of Civil Procedure.
5 No further court order under Federal Rule of Civil Procedure 30(a)(2) or Local Rule 16 is required
6 before the parties may conduct discovery.


7 6. Plaintiff is responsible for prosecuting this case. Plaintiff must promptly keep the
8 Court informed of any change of address and must comply with the Court's orders in a timely
9 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
10 to Federal Rule of Civil Procedure 41(b). Plaintiff must file a notice of change of address in every
11 pending case every time he is moved to a new facility.

12 7. Any motion for an extension of time must be filed no later than the deadline sought
13 to be extended and must be accompanied by a showing of good cause.

14 8. Plaintiff is cautioned that he must include the case name and case number for this
15 case on any document he submits to the Court for consideration in this case.

16 **IT IS SO ORDERED.**

17 Dated: 11/29/2018

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20 HAYWOOD S. GILLIAM, JR.
21 United States District Judge
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